The Solicitors' Journal

VOL. 90 — Saturday, October 19, 1946 — No. 42

CONTENTS

CURRENT TOPICS

The Michaelmas Term

FOR the Michaelmas sittings, which commenced on 12th October, there are twelve appeals to the Court of Appeal from the Chancery Division as compared with eleven last year, twenty-two from the Probate and Divorce Division as compared with seven last year, and three Admiralty appeals, the same number as last year. From the King's Bench Division the appeals number ninety-five as against fifty-four last year, and on the Revenue side there are twenty-six appeals. The county court appeals number sixty-nine, as against thirty-three last year, and there are twenty-four appeals under the Workmen's Compensation Acts (five last year). In the King's Bench Division there is a decrease of nine in the number of actions for trial as against last year's figure of 444. There are five special jury and two common jury actions (nine last year), 132 long non-juries (177 last year) and 266 short non-juries (251 last year), nine cases in the Commercial List (eight last year) and twenty-one short causes (eight last year). The causes and matters for hearing in the Chancery Division number 144, as against eighty-six last year at this time. These include fifty-five non-witness and forty-five witness actions. Mr. Justice WYNN-PARRY is to take the sixty-eight companies matters (sixty-one last year). There are three appeals and motions in bankruptcy. In Probate and Divorce the total is 6,616 as against 4,019 last year. Included among these are 5,496 undefended and 886 defended divorces. Last year at this time the numbers were 2,430 and 977 respectively. There are eight Admiralty actions for trial, an increase of one as against last year. There is a total of 142 appeals to the Divisional Court, forty more than last year. There are forty-one appeals in the Divisional Court List proper as against thirty last year, twenty-eight in the Revenue Paper (forty-four last year), ten under the Housing Acts (seven last year), fifty-two under the Pensions Appeal Tribunals Act, 1943, two under the Town and Country Planning Acts, 1932 to 1944, and one under the Public Works Facilities Act, 1930.

Mr. W. T. Creswell, K.C.

THE career of the late Mr. W. T. CRESWELL, K.C., who died on 10th October at the age of seventy-three, was an outstanding example of how experience in other spheres of action is of assistance in work at the Bar. He was forty-nine when he was called to the Bar by Gray's Inn, having already had a successful career in architecture and engineering. Before he commenced practice as an architect he had much valuable experience on the Royal Engineer staff of the War Office on reconstruction schemes at Aldershot, Colchester and Hong Kong. As might be expected, owing to his late arrival at the Bar, his work always was highly specialised and confined to work on building contracts, on which his legal and practical knowledge was vast. Of all his many text-books, that on "The Law Relating to Building and Engineering Contracts" is best known. Though learned, it is none the less practical and easy to read. Mr. Creswell was a man who even to the last spared himself little in public endeavour. He was a liveryman of the Worshipful Company of Plumbers and a Freeman of the City of London. He was an enthusiastic lecturer, and in the cause of public legal education, without thought of the loss to himself, he gave himself freely.

Commissioners for Matrimonial Causes

THE first two Special Commissioners to hear matrimonial causes in London, Mr. RICHARD BUSH JAMES, K.C., and Mr. B. M. CLOUTMAN, V.C., K.C., commenced their sittings on 15th October. The order prescribing the classes of case to be taken by the Special Commissioners lays down that these will be undefended divorce petitions founded on adultery, cruelty and desertion, except where damages are claimed. The majority of the cases to come into the Special Commissioners' lists will be service divorce cases. In order to avoid prejudice to the practices of those leading counsel who are appointed as Special Commissioners from time to time, it has been officially announced that their names will not normally be published until they are about to sit, and each Commissioner will sit for a period not exceeding a fortnight. The arrangement will certainly cause some inconvenience to solicitors and their clients who have briefed leading counsel, and, unless leading counsel knows of his proposed appointment a little more in advance than his clients, to himself. It is essential, if the lists in the High Court are not to be upset, that at least three days' notice should be given of these appointments.

Future International Trials

THE lengthy international trials which have just been concluded will establish a precedent, according to the best authorities, as well as a warning to future aggressors and transgressors. Some critics in this country have suggested that the only precedent which has been established is the not quite new one of *vae victis*. Lord PARMOOR, in *The Times* of 8th October, raised the question of "the justice of a system which only admits of the trial of the vanquished by the victors." Lord Parmoor, however, is to be distinguished from previous destructive critics of the trials, for he went on to say: "Let us hope that, before another war occurs, an international criminal court, with sufficient authority to enforce its judgments, may have been constituted, with a code of law clearly defined beforehand (for which the Nuremberg judgment may be of considerable value), with judges chosen from neutrals or embracing both parties, and with a Press either free or controlled on both sides, before whom either victors or vanquished can lay a charge. We should

LAW LIBRARY 1

then be nearer impartial justice." To some extent the Security Council of U.N.O. meets the need in exercising its power to deal with threatening situations, but how strongly its decisions would be reinforced by the decision of a competent international tribunal that specific acts were in pursuance of a plan of aggressive war. How much safer minorities would have felt from persecution if offending nations or individuals could have been brought before an impartial tribunal before colossal crimes against humanity had been committed, instead of after. It remains to be seen whether mankind can rise to this higher conception of law and justice.

Rules and Orders

IT would be quite unrealistic, according to the leading article in *Accountancy* for October, 1946, to hope for a reversion to the "two-tier system of law," i.e., that of case law and statute law unencumbered by the third tier of statutory rules and orders. The writer suggests therefore a number of things which remain to be done to "peptonise the indigestible mass." Legislation by reference should cease to be perpetrated in statutory rules and orders. "The overworked Select Committees appointed to examine new statutory rules and orders and to ensure that they do not offend general and hardly adequate safeguards laid down by Parliament, should be strengthened and the work shared among a number of similar committees. Instead of orders being part of the law in default of a negative resolution in Parliament within so many days, anything from twenty-one to 100, of their being laid on the table of the House, they should not become valid until approved by a positive vote. . . . It is not sufficient to aver that this would place a larger burden upon the overworked Legislature. Informed students of Parliamentary procedure are convinced that a reform of its methods would not only enable proper consideration to be given to regulations and orders, but would also enable, through the development of the committee system, a great deal of legislation to be subject to the well-tried process of the Parliamentary Bill, instead of the unduly simplified process of regulation and order. It is also important that at the earliest possible stage gleaning of redundant and unnecessary orders should be pushed ahead rapidly." These are reforms on which there should be no political alignment. The only issue is as to whether they are practicable. A body of 615 adequately paid members, assisted by a second chamber of experienced and elder legislators, should be able to accomplish all this and more.

Courts Martial

THE public conscience has been exercised of late with regard to the work of courts martial. In a short space of time three outstanding cases have been made known in which a court martial has made a finding which has subsequently been quashed or discredited. In one case a barrister who had been found guilty of an offence by a court martial was completely exonerated by the Benchers of his Inn, among whom were judges of the High Court and the Court of Appeal. A solicitor who had been convicted before a court martial had his case investigated by the Disciplinary Committee of The Law Society, who held that no case had been made against him. In both of these cases the Secretary of State for Air has been unable to advise His Majesty to issue any special directions. In the third case it is true that irregularities in the trial of a large number of men resulted in their convictions being quashed, but only after a great deal of unnecessary suffering had been caused. As Mr. R. E. MANNINGHAM-BULLER, M.P., wrote in the *Sunday Times* of 13th October, in the case of an indictment in a criminal court there is a right to be tried by a jury and a right of appeal. Is there any reason now, he asked, why soldiers and airmen charged with offences against the criminal law should not be tried in the ordinary courts of the land? He further asked why there should not be a right of appeal to the Court of Criminal Appeal. A committee reported in July, 1938, on the existing system of courts martial (Cmd. 6200), but no effect has yet been given to any of its recommendations. Mr. Manningham-Buller wrote: "The committee set to work after years of peace. It would be best to review the whole system afresh in the light of war-time experience . . . A fresh independent committee should be appointed, with wide terms of reference, to hold that inquiry in public."

Road Accident Statistics

ON 30th September the Ministry of Transport announced that during August road casualties in Great Britain numbered 446 killed and 15,168 injured. Deaths, although nine more than in July, were forty-two fewer than in August of last year, and were well below the pre-war average for the month. Among those killed were ninety-four children, twenty-seven of whom were riding bicycles. Fatalities in the first eight months of this year totalled 3,226, thirty fewer than in the corresponding period of 1945, and 900 fewer than in the same period of 1939. A circular letter dated 1st October from the Pedestrians' Association states that in their opinion the road accident returns for August do not justify the satisfaction expressed by the Ministry of Transport in their accompanying comment. The Association states: "The Ministry draws attention to the forty-two fewer deaths compared with August last year, but overlooks first, that August this year was one of the wettest in living memory, and secondly, that last August the figures shot up owing to VJ Day falling within that month. Moreover, as compared with last August fatalities involving Service vehicles have dropped from eighty-seven to twenty-nine. This masks an increase in fatalities involving other classes of vehicles. Having drawn attention to the fact that for the first eight months of this year the 3,226 fatalities represents a drop of thirty, compared with the corresponding period of last year, the Ministry adds: 'There has, however, been an increase in the number of non-fatal accidents reported.' This comment conceals the fact that in the first eight months of this year, compared with the corresponding period of last year, the number of injured has increased from 80,587 to 99,446, figures that hardly justify the Ministry's conclusion: 'The accident figures, taken as a whole, show that road users generally are beginning to take more care'." Furthermore, the letter states, the number of children killed on the roads in August was 104 and not ninety-four as given in the Ministry's statement to the Press. Complacency in such matters is unthinkable, and all honour is due to the Association and its officers for its endeavour to keep the public conscience awakened to the shocking realities of our so-called civilisation.

British Interests in Czechoslovakia and Poland

AN announcement by the Board of Trade in regard to claims for compensation by British property owners in Czechoslovakia and Poland is dealt with in the September issue of the *Law Society's Gazette*. His Majesty's Government, it is stated, has now made arrangements with those countries and is willing to make representations to them on behalf of British owners affected. A register of British property, rights and interests in those countries is being made. Registration will be accepted from (i) bodies of persons incorporated or constituted in the United Kingdom, including the Channel Isles and the Isle of Man, and (ii) British subjects normally residing (*a*) in the United Kingdom, or (*b*) elsewhere, if registration facilities are not available locally. The assets covered are (i) immovable property (premises of all kinds, whether business or residential), (ii) movable property (machinery, furniture, etc.), (iii) rights and interests in property, (iv) claims of a monetary nature, such as commercial debts, bank balances, etc., (v) stocks, shares, debentures, securities, other than those issued by State and municipal authorities. Those who have already notified the department of interests and claims are nevertheless asked to complete the forms for inclusion in the register, which will be kept at the Trading with the Enemy Department, 24 Kingsway, London, W.C.2. Applications for the appropriate forms should indicate the class of asset.

CRIMINAL LAW AND PRACTICE

WITHDRAWAL OF PROSECUTIONS

THERE is a great deal of learning in the reports on the subject of withdrawing prosecutions, much of it amounting to little more than affirmations of the well-known principle that it is illegal to compound a felony (*R.* v. *Burgess* (1885), 16 Q.B.D. 141), or indeed any crime. In practice, it is very often a much more delicate matter than the mere application of this rule would lead one to suppose.

A recent instance of the difficulty of the matter occurred when two London magistrates appeared to give diametrically opposite views of what the practice was. In one case a lady prosecuting charges of theft said, through her solicitor, that she did not wish to proceed with the charges. The magistrate, remanding the accused, said that it not only had to be considered by him, but by the Director of Public Prosecutions.

On the same day, in another London court, the magistrate was told that a prosecutrix, on a charge of causing grievous bodily harm, did not wish to go on with the case, and was informed that the usual practice was to remand the accused while the facts were reported to the Director of Public Prosecutions. He discharged the accused and ordered that the matter be reported to the Director, but said that the practice of remanding, if there was such a practice in such circumstances, was hopelessly wrong. He said : " This is a court in which everybody is innocent unless there is evidence to prove that he is guilty. My obvious duty is to free this man and report the matter to the Director. I will not dream of remanding him. It is a matter of principle. If the Director thinks there is something wrong, the police will intervene and start it again." (*The Times*, 24th September, 1946).

On 7th October at the Hendon Magistrates Court, the magistrates were advised, according to a report in the *Hendon and Finchley Times*, that " under a new ruling " they could not discuss a case without sending the papers to the Director.

Now the Director of Public Prosecutions is an administrative and not a judicial officer, and it would be strange indeed if in this country the question whether a charge should be withdrawn, which is primarily judicial, once the court is put in possession of it, should rest for final determination with an administrative official. If it does not rest with the Director in the last resort, there would seem little point in ordering a remand and in not discharging the accused. Under s. 5 of the Prosecution of Offences Act, 1879, it is undoubtedly the clerk's duty to transmit to the Director a copy of the information, depositions and other documents relating to a case in which a prosecution for an offence instituted before the court is withdrawn, and he is subject to a penalty if he fails to do so, but the court is seized of the matter, and the statute does not provide in any way for any limitation of the court's powers in favour of the Director.

The duty of the Director, as laid down in s. 2 of the Act, is, under the superintendence of the Attorney-General, merely to institute, undertake or carry on criminal proceedings in cases prescribed by regulations (see Regulations of July, 1886), and to give advice and assistance to clerks of justices (*inter alios*) respecting the conduct of criminal proceedings in which they are concerned. It is, no doubt, convenient to order a remand where the clerk is in doubt as to how he should advise the bench in exercising its discretion as to its approval of the proposed withdrawal of a charge, but the bench have an unfettered discretion which they must exercise judicially, and the fact that the Director has not been given an opportunity to offer his advice on the matter is no bar to a valid exercise of the discretion, nor is it a flaw in any way affecting the decision of the bench to approve a withdrawal.

In the exercise of their discretion a bench will refuse to allow a summons to be withdrawn if satisfied that that course is requested as a result of an illegal compounding agreement having been made. When a defendant offers restitution, the bench will only allow the prosecution to be withdrawn if they come to the conclusion that there is a reasonable doubt whether the case is of a criminal character and not one primarily for the civil courts. The High Court recently laid down in emphatic terms that the criminal courts should not be used as a debt collecting agency.

The matter can be put no more clearly than it was put by Lush, L.J., in *Whitmore* v. *Farley* (1881), 45 L.T. 99, at p. 101, where he said that every agreement by which " a prosecutor in consideration of a private benefit, has consented to compound or withdraw from a charge of felony," is illegal and unenforceable, and that once proceedings have been instituted " he has acted on behalf of the public, and used the name of the sovereign as representing the public, and cannot legally enter into a binding agreement to discontinue the prosecution." He added that the same rule applied to a misdemeanour. Even in a case of assault, where Lord Justice Lush thought the parties might " compromise the offence without being guilty of an illegal act," they cannot by so doing take away the jurisdiction of the court to proceed with the trial of the charge (*Ex parte Bryant* (1863), 27 J.P. Jo. 277). Of course, if the complaint has only been made to a constable, he cannot proceed with the matter if the aggrieved person refuses thereafter to come forward (*Nicholson* v. *Booth and Naylor* (1888), 52 J.P. 662).

The result of withdrawing a summons seems to depend on the circumstances of the withdrawal. The leading authority of *Pickavance* v. *Pickavance* [1901] P. 60, seems to suggest that once the court has given leave to withdraw a summons, that complaint falls to the ground, and the court " cannot be competent to revive it again by issuing a fresh summons on the same ground." The summons in that case was for persistent cruelty under the Summary Jurisdiction (Married Women) Act, 1895, but the court referred specifically to criminal proceedings.

Later, in considering an information under s. 1 of the Betting Act, 1853, to the withdrawal of which the justices had consented on account of some technical omissions (*Davis* v. *Morton* [1913] 2 K.B. 479), the court distinguished *Pickavance* v. *Pickavance*, and held that " where the withdrawal of the summons has not been on the merits of the case, but on a preliminary point, the withdrawal is not equivalent to a dismissal or acquittal, so as to prevent a fresh charge for the same offence from being preferred."

COMPANY LAW AND PRACTICE

AUDITORS AND INSPECTORS

THE auditor of a company is a sort of watchdog in the interests both of the general body of shareholders and of the public at large. Strangely enough, however, Parliament has never yet seen fit to provide that the watchdog should be a trained watchdog. Naturally in point of fact, qualified persons such as chartered accountants are almost invariably appointed, but as far as the law is concerned, any old dog will do. The only restrictions on the appointment of auditors are the limited negative provisions of s. 133 of the Companies Act, 1929, which says that no director or other officer of a company, no body corporate and (except in the case of a private company) no person in partnership with or employed by an officer of a company may be appointed auditor. Companies are in this respect much freer than industrial and provident societies and collecting societies, who have to choose their auditors from a list issued by the Treasury. The Cohen Committee has recommended that the company's power of selection should be similarly restricted, and that a company should be made to appoint an auditor who is on a list to be prepared by the Board of Trade. For the great majority

of companies this recommendation, if followed by Parliament, will have no effect in practice. The choice will be a very wide one and will embrace all those who are normally appointed auditors under the existing general practice. The Treasury list applicable to industrial and provident societies, etc., includes members of the various bodies of chartered accountants, of the Society of Incorporated Accountants and Auditors and of the Association of Certified and Corporate Accountants. The Cohen Committee has also recommended that a private company should have to choose its auditor in exactly the same way as a public company, and consequently the existing exception in favour of a private company which allows the appointment of a partner or employee of one of the company's officers will probably be abolished by the proposed new Act.

The duty of the auditors is to make a report to the members of the company on the accounts examined by them. How do they discharge this statutory obligation? It is to be observed that under the Act the report is to be a report to the members. In practice, the auditors prepare and sign a report and send it off to the secretary of the company and in due course there will be a meeting of the company at which any shareholder who cares to attend may ask questions arising out of the report. But suppose no such meeting is called. Is it then the duty of the auditors to take some further step to bring their report to the attention of the members? This point was raised in *In re Allen, Craig and Co. (London), Limited* [1934] Ch. 483, and was answered in the negative. It was there contended that the auditors had a duty to every single individual member; that if a meeting was held the members present represented all the members, and therefore no further question arose; but that if there was no meeting, the auditors had to communicate orally or in writing with each member. This last contention was ruled out—the life of an auditor would have been very complicated if it had been held to be sound. The statutory duty was thereby limited to a duty to a general meeting of the company. Since the auditors have no power to convene a general meeting, and since, moreover, the Act provides for meetings at regular intervals, the holding of which can and should be enforced by the shareholders, the auditor has done all that is necessary and all that is possible when he has sent his report to the secretary of the company. "In my judgment," said Bennett, J., "the duty of the auditors, after having affixed their signatures to a report annexed to a balance sheet, is confined to forwarding that report to the secretary of the company, leaving the secretary of the company or the directors to perform the duties which the statute imposes of convening a general meeting to consider the report." It is no part of the duty of an auditor to see that the directors perform the duties of directors.

A common criticism of the extent of the auditors' responsibility was noted by the Cohen Committee. Under the present Act the auditors are only required to certify that the balance sheet exhibits a true and correct view of the state of the company's affairs, according to the best of their (i.e., the auditors') information and the explanations given to them, and as shown by the books of the company. It is these last words "as shown by the books of the company" which have provoked criticism as unduly limiting the value of the auditors' certificate. In recommending the deletion of these words the committee points out that here again it is recommending a change which will not amount to much in practice since no auditor of any standing would take advantage of the limiting words in a case where he felt that the books submitted to him had not given him all the information which he required. The limitation is, however, in the words of the committee, "a source of temptation to the weak auditor" and should be abolished.

An auditor and an inspector are different. A company may under s. 137 of the Act by special resolution appoint an inspector to investigate its affairs. An inspector may also be appointed by the Board of Trade under s. 135, though the Board cannot appoint unless first requested to do so by a specified proportion of the members. An inspector appointed by the Board presents a report to the Board; an inspector appointed by the company in general meeting reports as directed by the meeting. Inspectors may call for any books or documents in the company's possession and may examine the company's officers and agents on oath in relation to the business of the company. Officers and agents who do not comply with the requirements of the inspector may be punished on the same footing as if they had been guilty of contempt of court. Clearly, therefore, the function and powers of an inspector are much wider than those of an auditor, and it is no good trying to get the auditor to carry out any investigation beyond the normal scope of his office without going through the formalities required for the appointment of an inspector. The case of *Scott* v. *Scott* [1943] W.N. 18, illustrates this point. In that case a general meeting of a company passed a resolution in the ordinary form appointing a firm of chartered accountants to audit the accounts for the coming year. A second resolution was then passed whereby this firm was instructed to investigate the financial affairs of the company for the two previous years. Two of the shareholders claimed that this latter resolution was invalid and ineffective, and Lord Clauson (sitting as an additional judge of the Chancery Division) upheld the claim on the grounds that it was an attempt to do by an ordinary resolution something which required a special resolution under s. 137. The appointment of the auditors as auditors was good, but the extended commission given to them by the second resolution was beyond the normal scope of their duties and was an abortive attempt to make them inspectors as well as auditors without observing the formalities prescribed by the Act.

The first auditors of a new company may be appointed by the directors at any time before the holding of the first annual general meeting. If none are so appointed, then the company should appoint at the first annual general meeting. Thereafter an appointment has to be made at each successive annual general meeting and the auditors so appointed hold office until the next annual general meeting and no longer. If a casual vacancy occurs, then the directors may make an appointment which will be valid for the unexpired portion of the company's year. At present under the Act of 1929 any failure by the company to appoint auditors at the annual general meeting may be reported by any shareholder to the Board of Trade with a request to the Board to make an appointment. The Board cannot, however, as the law stands at the moment, make any such appointment unless and until it has been requested to do so by a shareholder. The Cohen Committee considered that the law should be tightened up in this respect. The committee recommended that the Board should be able to act without any prior request; that the Board should have a duty and not merely a power to fill the vacancy; and that in any case where an annual general meeting has neglected to appoint auditors it should be the duty of the company to report the fact to the Board. Presumably the permissive power of the directors to fill casual vacancies will remain and no doubt in most cases it is more satisfactory to all concerned for the auditors to be appointed by the directors, but the effect of the recommendations of the committee will be to ensure that the Board is always aware of any vacancy and to give the Board power to fill such a vacancy if for any reason the directors do not do so themselves.

The Judicial Committee of the Privy Council began its Michaelmas Sittings with a list of forty-eight appeals, of which four are from Canada, one from New Zealand, one from West Africa, three from Palestine, two from Ceylon, and thirty-six from India. There is one prize appeal. Fifteen judgments await delivery.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel. Langham 2127), on Thursday, 24th October, 1946, at 8.15 p.m., when a Paper will be read by Mr. Leonard Le Marchant Minty, B.Sc., B.Com., LL.B., Ph.D., barrister-at-law, on "Legal Aid to Assisted Persons."

A CONVEYANCER'S DIARY

LIMITATION OF ACTIONS FOR THE RECOVERY OF LAND—I

I HAVE been asked to give some brief account of the practical effect of the Limitation Act, 1939, with reference to land. The subject is a very wide one and any dealing with it here must tend to suffer from over-simplification.

Under s. 4 of the Act it is provided that no action shall be brought by any person to recover land after the expiration of twelve years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person. There are modifications of this rule with reference to actions brought by the Crown and to actions brought by persons claiming through the Crown; there are also like provisions with regard to spiritual or eleemosynary corporations sole, which need not detain us. By s. 16 it is provided that upon expiration of the prescribed period for any person to bring an action to recover land the title of that person to the land is to be extinguished. An exception is made in the case of settled land and land held on trust for sale, which will be noticed later. These provisions are deceptive in their simplicity. When there is only one legal and one equitable interest in land, both belonging to the same person, their effect is, of course, that the title of the owner of that legal and equitable interest is barred twelve years after the period of limitation began to run. One must bear in mind that s. 10 of the Act provides that no right of action to recover land is to be deemed for the purposes of the Act to accrue unless the land is in the possession of some person in whose favour the period of limitation can run. The possession of such a person is, in the section, referred to as an "adverse possession." The Act is an Act to regulate the position of trespassers, not that of persons lawfully in possession. The results may be curious, especially in view of the rule that possession is never adverse if it can be referred to a lawful title. The most important application of this principle is in the case of a person entering on the lands of an infant. Such a person is *prima facie* regarded as a bailiff for the infant and the onus is on him to show that he is an adverse possessor having the benefit of the Act. Other classes of persons are also incapable of being adverse possessors. For example, in an Irish case (*Peakin* v. *Peakin* (1895), 2 Ir. R. 359), the owner's sisters were held to be his guests and not his tenants. Adverse possession is, however, normally established with fair ease. The next main point to remember is that if the true owner moves out, leaving the premises vacant, and, after an interval, a squatter moves in, the period only runs from the date of the entry of the squatter, since it is only then that an action for his ejectment could have been brought.

Greater difficulties arise in cases where the interests are more complex. I do not pause to consider the position of persons entitled to rent-charges, as this is a comparatively unusual form of interest. But a large proportion of the land in this country is still subject to trusts of one kind or another under which limited interests exist. In this connection one must not forget that in s. 31 of the Act the word "land" is defined as including corporeal hereditaments and certain specified incorporeal hereditaments "and any legal or equitable estate or interest therein, including an interest in the proceeds of sale of land held upon trust for sale." In this definition there is no distinction between land subject to the Settled Land Act and land subject to a trust for sale such as we meet in ordinary conveyancing. The two groups are here treated as virtually identical. The definition, moreover, gives the status of land, for the purposes of the Limitation Act, to each separate limited interest, however small and however remote. It follows that where a squatter has been in occupation for twelve years the only interests which are barred are those of the persons who, during all those twelve years, had a right to recover possession of the land. Thus, if there is a tenant for life and a remainderman, the latter had no cause of action for ejectment, and therefore the period will not have begun to run against him until the death of the life tenant. The Act deals with this position as follows. By s. 6 it is provided that the right of action in respect of a future interest in land is to be deemed to have accrued on the date when the estate or interest fell into possession by the determination of the preceding estate or interest. Thus, in the case which we have taken, time began to run against the life tenant at the date when the squatter entered. Assuming, however, that the life tenant died after ten years, his interest came to an end by natural causes before it was barred by the Act; at the same date time began to run against the remainderman. Accordingly, the title of the squatter will only be good as against the interest of the remainderman twenty-two years after his original entry, that being the date at which the twelve-year period from the falling into possession of the interest of the remainderman will expire. There are, of course, more complicated cases than this, but it will show how easy it is for twelve years adverse possession to fail to give a valid title to the squatter.

In the case of leases the position is mainly regulated by ss. 8 and 9. The lessor, during a lease for years, has no right of action to recover the land against the lessee, and, therefore, the lessee by being in possession without paying rent does not acquire any title. It might be supposed that he would do so on the ground that the breach of his covenant to pay rent gave the landlord a right of re-entry which he did not exercise. The rule is, however, that a clause of forfeiture is construed as making the lease voidable at the option of the lessor and not void. Under s. 8 the right of action in respect of each forfeiture accrues to the reversioner on the date on which that forfeiture was incurred, but if the reversioner ignores the forfeiture he is not thereby damnified. Of a series of breaches of covenant, the landlord can, therefore, take advantage of the last. Consequently, if the lease is for ninety-nine years, and the tenant pays no rent for the first twenty years, the landlord can still eject him for non-payment (subject to the other relevant statutory provisions as to relief) in the twenty-first year.

As regards tenancies at will the Act has made special provision. A tenant at will is lawfully in possession, with the result that if special provision had not been made he would never be able to acquire a title, because ejectment could never be brought against him except upon determination of the tenancy at will. The rule laid down by s. 9 (1) is, however, that a tenancy at will is for the purposes of the Act to be deemed to have been determined one year after its commencement. Accordingly, a tenant at will acquires a title after he has been in possession for thirteen years. In this, as in all other cases, the payment of rent starts the period running again, and the thirteen-year period is, therefore, only applicable to the case of a tenant at will who never pays any rent.

A tenant at sufferance acquires title more easily; he has held over after the expiration of his contractual tenancy and he is simply a trespasser. Unless he pays rent (which would, under the ordinary rule, make him a tenant from year to year or for some other period to which the payment of rent is referable) he will acquire a title in twelve years, since the whole of his possession is adverse. I conceive that if a tenant holds over at the expiration of his contractual tenancy by virtue of the Rent Restrictions Acts, he will never acquire a title until twelve years after the protection of those Acts is withdrawn from him, since, until then, no one can bring ejectment against him. So far as I know, there is no reported decision on this point, but I do not think there can be much doubt about it. Yet another rule applies to the case of a tenant from year to year or for some other period who continues in possession paying no rent. Section 9 (2) of the Act provides that for the purposes of the Act the tenancy shall be deemed to have expired at the end of the first year or other period, and that the right of action of the reversioner is to be deemed to have accrued at that

date. The tenant thus has the privileges of a trespasser from that date, and the twelve-year period runs in his favour from then.

Mortgages are treated separately. An action by the mortgagee for foreclosure is an ordinary action to recover land. The result is that when the mortgagor has been for twelve years in possession as against a mortgagee who is entitled to succeed in an action for foreclosure, that action is barred and with it the mortgagee's estate, since that estate is an interest in land. Once the action is barred and the estate extinguished, acknowledgment or payment cannot revive either of them. It is, however, possible for the action on the personal covenant to be revived by acknowledgment or payment more than twelve years after the last date on which payment was made, because there is no provision in the Act extinguishing the title of a person entitled to the benefit of a covenant, but only his right of action to enforce the covenant. I have seen a case in practice where, for these reasons, the mortgage term was extinguished and with it all the mortgagee's rights and remedies against the land, but where he was still able to sue on the personal covenant. The action for redemption is not an action to recover land and is dealt with specially by s. 12 of the Act. When a mortgagee of land has been in possession of it for twelve years, no action to redeem it may be brought by the mortgagor. Once this period has expired, it is advisable for the mortgagee to execute a deed of enlargement under s. 153 of the Law of Property Act enlarging his mortgage term into a fee simple. The need for him to do so illustrates the negative effect of limitation in our law. The effluxion of time merely extinguishes the estate of the person against whom it has run; it creates no estate in anyone else. Thus, the fee simple of the mortgagor is extinguished, which leaves the mortgagee with a long term not subject to any right of redemption. Something more than the effluxion of time is needed to convert the term into the freehold.

LANDLORD AND TENANT NOTEBOOK

REASONABLENESS OF REFUSAL OF CONSENT TO ALIENATION

WHEN the Legislature decided to restrict the power of a covenantee under a qualified covenant against alienation, by which I mean a covenant containing the words or the equivalent of the words "without the consent of . . .", it did so by importing into all such covenants a "proviso to the effect that such licence or consent is not to be unreasonably withheld" (L.T.A., 1927, s. 19 (1) (*a*)). Such qualified covenants frequently did and do conclude with provisos to that effect; but sometimes the adverb used is "arbitrarily," not "unreasonably," and the purpose of this article is to inquire whether there is any significance in the selection of the latter term.

Having quoted the statute, I propose to continue my opening remarks by citing one fictitious and one actual decision. The fictitious case is the work of a writer who, despite his flippant approach, may well be regarded as an authority on many points of law. In the course of *Fardell* v. *Potts*, then, one of Sir Alan Herbert's "Misleading Cases," Marrow, L.J., discusses at length the Reasonable Man, and one sentence in the judgment runs: "This noble creature stands in singular contrast to his kinsman the Economic Man, whose every action is prompted by the single spur of selfish advantage, and directed to the single end of monetary gain. The Reasonable Man is always thinking of others; prudence is his guide . . ."

This judgment would not, of course, bind the House of Lords, and my next quotation is from the speech of Lord Phillimore in *Tredegar (Viscount)* v. *Harwood* [1929] A.C. 72: "If it be a question whether a man is acting reasonably, as distinguished from justly, fairly, or kindly, you are to take into consideration the motives and convenience which affect him, not those which affect somebody else."

This was said in an *obiter dictum*, but it equates the Reasonable Man to the Economic Man; and before leaving the subject, it is, perhaps, of interest to note that Marrow, L.J., soon after mentioning that he need not multiply examples, proceeded to give a vast number of illustrations some of which appear to support Lord Phillimore's view rather than his own. Thus, if, on the one hand, the Reasonable Man "believes no gossip, never drives his ball till those in front of him have definitely vacated the putting green which is his own objective, never makes an excessive demand upon his wife, his neighbours, his servants, his ox, or his ass," etc., on the other hand, he is one who "invariably looks where he is going, records in every case upon the counterfoils of cheques such ample details as are desirable, will inform himself of the history and habits of a dog before administering a caress," and so forth. These two groups suggest that if Marrow, L.J., had enlarged upon the circumstances in which a landlord may reasonably withhold consent to a proposed assignment or sub-letting, the weight of the authority might have been doubtful, and that even the creature of A.P.H.'s brilliant and informed imagination might find the question a difficult one.

For the dictum of Lord Phillimore in fact constituted the first shock to those of us who had thought that the judgment of Warrington, L.J., in *Houlder Bros. & Co.* v. *Gibbs* [1925] Ch. 575 (C.A.), was the last word on the subject, laying down that the (doubly qualified) covenant "was intended to protect the lessor against a lessee who, although respectable and responsible, might well be objectionable in other ways, or, secondly, from the point of view of property, to prevent the lessor from having to accept a lessee whose user of the property might, again, be reasonably objectionable." A casual reading of this passage might suggest that it gave us a clear-cut statement of the law; more careful perusal shows that it certainly makes no attempt to define "unreasonably," for it actually uses the expression "reasonably." Moreover, the judgment proceeded: "The user of the property, to be reasonably objectionable, would not necessarily be objectionable to the lessor as lessor of that particular property" so that in the result this authority, though it tells us something about the nature of the restriction, does little to indicate its limits. And when describing nature, it does not suggest whether, in deciding whether user is or is not "objectionable," the question is to be looked at from the viewpoint of the selfish Economic Man or that of the Reasonable Man who is always thinking of others.

Thus it was that in *Premier Confectionery (London) Co.* v. *London Commercial Sale Rooms, Ltd.* [1933] Ch. 904, Bennett, J., was able to "apply" the older decision when holding that a refusal of consent to an assignment which would have resulted in two tenants carrying on the same trade in the same building did not infringe L.T.A., 1927, s. 19 (1). The proposed assignee was respectable and responsible, but the result of competition would be to reduce the subsequent letting value of the other property, and "if a reasonable man might think that the proposed user of the premises or the proposed occupation of the premises will be undesirable, then . . . it is within the right of the landlord to withhold his consent . . ." And "the opinion that the separation . . . may injuriously affect the landlord's property . . . is one which may be entertained by reasonable persons and is not wholly unreasonable." Again, it would seem that a landlord whose action is "prompted by the single spur of selfish advantage" will not be held to be acting unreasonably.

In the course of argument in the last-mentioned case, *Tredegar (Viscount)* v. *Harwood* was referred to, being cited by the tenants' counsel; it was never mentioned in Bennett, J.'s judgment. And it seems rather curious that it should have been cited on behalf of the tenants, for while dicta uttered expressed doubt as to the soundness of *Houlder Bros. & Co.* v.

Gibbs, the suggestions appear to be that that decision interpreted "reasonably" too narrowly but erred in over-restricting the landlord. "I am not inclined to adhere to the pronouncement that reasonableness was only to be referred to something which touched both parties to the lease," said Lord Dunedin. "I should read reasonableness in the general sense." And Lord Phillimore said that he "shared the doubt expressed by Lord Dunedin as to the soundness of the judgment in *Houlder Bros. & Co.* v. *Gibbs*" before making the reference to justice, fairness and kindness as opposed to convenience and interest which I have already cited.

The truth must, I submit, be arrived at by analysis of the descriptions of Reasonable Man and Economic Man attributed to Marrow, L.J. I have hitherto treated the two descriptions as simple statements; but a little critical scrutiny shows that each falls into two parts, and this may account for the irreconcilability of some of the illustrations. Thus the Economic Man is one whose every action is (*a*) prompted by the single spur of selfish advantage, and (*b*) directed to the single end of monetary gain. The Reasonable Man is (*a*) always thinking of others, and (*b*) guided by prudence. My submission is that what the historical cases on the subject of refusal of a landlord's consent have shown is that the landlord acts reasonably if he fulfils the requirements of (*a*) in the case of Marrow, L.J.'s Economic Man, and (*b*) in the case of the Reasonable Man. For if the authorities I have discussed show that a landlord may regard his own advantage and be guided by prudence without being unreasonable, there are a number of others to show that he is disqualified if he seeks actual monetary gain (and this apart from L.P.A., 1925, s. 144), but not that he must think of others in reaching his decision. For these reasons I think that the Legislature considered that by stipulating for reasonableness, it automatically excluded arbitrariness; and that the decision must be referable to some, though not necessarily an altruistic, motive.

TO-DAY AND YESTERDAY

October 14.—On 14th October, 1613, John Chamberlaine wrote to Dudley Carleton: "Sir John Brograve, Attorney of the Duchy, is lately dead, and one Moseley, an obscure lawyer, son of an alderman of this city, is in his place." Both were members of Gray's Inn. Brograve had been a Bencher since 1576, when he performed the summer reading "upon part of the Statute of 27 H.8, c. 10, of Uses, concerning jointures, beginning at the twelfth branch thereof." He was appointed Attorney for the Duchy of Lancaster in 1580. On succeeding him, Moseley was made a Bencher and also knighted. Previously he had been judge of the Sheriff's Court.

October 15.—Alfred Stephen was born in 1802, the son of a lawyer practising at St. Christopher's, who afterwards became a judge in New South Wales. He himself was called to the Bar by Lincoln's Inn in 1823, and in the following year sailed for Van Dieman's Land, where he was appointed Solicitor-General. The place was just emerging from its first condition as a convict settlement and Stephen played a great part in framing new laws and organising courts. After a long struggle he secured the introduction of trial by jury. In 1833, he was appointed Attorney-General, resigning in 1837 in consequence of a severe illness. In 1839, he was appointed a judge in New South Wales, and in 1844, Chief Justice. His courtesy and humanity did not preclude a measure of severity not undesirable in a place where convicts formed a high proportion of the population. His influence set a high standard of judicial conduct in the Australian courts. He was knighted in 1846. His resignation in 1873 was marked by demonstrations of high regard. From 1875 to 1891 he was Lieutenant-Governor. He remained active and vigorous almost till his death on 15th October, 1894.

October 16.—On 16th October, 1588, the Gray's Inn Benchers ordered that "upon a certificate made by Mr. Studley, Mayor of Southampton, that Mr. Goddard was by commandment compelled to stay in Southampton for Her Majesty's service during all the last Reading, therefore the said Mr. Goddard is discharged of his default for his last vacation." The Reading was in August, and the battle with the Spanish Armada was going on throughout July.

October 17.—On 17th October, 1599, the Gray's Inn Benchers ordered that "for as much as divers of the gentlemen of the House as well ancients, utter-barristers as others are indebted unto this House for their vacations, commons and other duties . . . by reason whereof the brewer and baker and others that have served the House with victuals . . . are unpaid and some of the officers of this House to whom they have given credit are like to be greatly impoverished to the great discredit of the whole Society," it was ordered that the members should enter into bonds with two sureties for payment of their dues.

October 18.—John Dunning, second son of an Ashburton attorney, was born on 18th October, 1731. He was first articled to his father, but afterwards went to the Bar and came to be recognised as the soundest common and constitutional lawyer of his time. He became Solicitor-General, Chancellor of the Duchy of Lancaster and a peer under the title of Lord Ashburton.

October 19.—On 19th October, 1629, the Gray's Inn Benchers ordered that "the gardener in the time of divine service and sermons is not to suffer any gentlemen of the House or others to be in the Walks but to keep the door shut during that time."

October 20.—Condemned to death in 1746 with Lord Balmerino and Lord Kilmarnock for being also involved in Prince Charlie's rising, the Earl of Cromarty was not, however, executed. Nevertheless, it was not till 20th October, 1749, that he was granted a pardon under the Great Seal. Five hundred pounds a year was allowed him out of his forfeited estate to maintain his family, and the rest of the proceeds of its sale was to be settled on his children.

FOR THE CHILDREN

It appears that in the intervals of conducting the prosecutions at Nuremberg Sir David Maxwell Fyfe engaged in writing a fairy tale, "The Wishing Doll," in fortnightly instalments, for his seven-year-old daughter Miranda. After the tenth chapter leisure failed, but sweets and rhymes about current happenings continued. One recalls Sir Frank Lockwood, whose inventions and fancies kept amused first a younger sister Agnes and later on his own children. An illustrated letter to Agnes written from 1, Hare Court, on 28th November 1872, is doubly amusing at the present moment: "My dear Agnes, I do not know whether you have ever heard of a strike. They are very fashionable just now. Policemen strike, curates strike, organ grinders strike. In fact, all people that on earth do dwell strike, excepting of course lawyers, who know better, and act according. But of all the strikes, the one that strikes my mind as most disgraceful is the one which I have endeavoured to depict on the other side of this page. Fancy, a girls' school has struck. They put the globes into the grand piano, and hung the harp on a willow tree in the back garden. As I passed by the house and saw what I have drawn, I thought of you and at once sat down in the middle of the road to write this letter. As I see the water cart coming round the corner I think I had better get up. So with best love, Believe me, your affectionate brother, Frank." The drawing depicted four defiant little girls bearing placards: "Down with the use of Globes," "Liberty and no French Irregular Verbs," and the like. For his own children he invented a boy called Moses of unnatural wickedness, always misbehaving and in trouble and never ceasing to torment his devoted Aunt Maria. Graphic illustrations would depict him brutally snowballing his aunt or behaving rudely to her while they were out skating. One elaborate scene recorded Moses weeping in the dock in the grip of a policeman, standing before Lockwood as Recorder of Sheffield, for blacking Aunt Maria's eye. One masterpiece showed Moses repulsively and impertinently ugly, but clad in the garments of a Kate Greenaway small boy, perched beside Gladstone on the Treasury Bench.

TEMPLE BAR

A correspondent recently wrote to a daily newspaper suggesting that the Benchers might find a place in the Temple Gardens for old Temple Bar, long a neglected exile beyond the bounds of London. The idea is a good one. The ancient gateway would constitute a beautiful and imposing entrance from the Embankment and its presence there might shame the lawyers into demolishing (when circumstances permit) the over ornate monstrosity in architecture called "Temple Gardens." Temple Bar was built to the designs of Christopher Wren, and at the lower end of Middle Temple Lane it would present an interesting

comparison with the gate at the upper end erected in 1683-84, which was likewise his work. Unfortunately, the legal associations of Wren's gateway are exceedingly unpleasant, since for almost a century it was used for exposing the butchered remains of executed rebels, first in 1684 Sir Thomas Armstrong's forequarter, boiled in pitch, after his execution for participation in the Rye House Plot, and sixty years later the heads of some of the Jacobites executed after Prince Charlie's rising. On 16th August, 1746, Horace Walpole recorded that he "passed under the new heads at Temple Bar where people make a trade of letting spying-glasses at a halfpenny a look." The last two heads fell in 1772, but the spikes remained till the nineteenth century. An Inner Temple barrister wrote a book on the custom called "The City Golgotha." One head so exposed was that of Christopher Layer, a Middle Temple barrister executed on 17th May, 1723, for plotting an insurrection against the Hanoverian dynasty.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Resale of New Motor Cars

Sir,—I have read with considerable interest the article under the above head in "A Conveyancer's Diary" (*ante p.* 425). I agree with the writer, and I do not think it can seriously be disputed, that in the event of an owner threatening or intending to sell his car in breach of the covenant an action by the dealer for an injunction would probably be successful. It may be that the combination of circumstances whereby the intention of the owner to act in breach of the covenant is revealed in time to permit of such proceedings will be comparatively rare; although, of course to take one example, the action of an owner in advertising his car for sale in breach of the covenant would, I imagine, be sufficient to ground an application for an injunction. Furthermore I have no doubt whatsoever that The British Motor Trade Association has at its disposal a competent and experienced organisation designed specifically for the purpose of discovering and bringing to light such embryonic breaches.

However, I think the writer of the article is correct in stating that the real sanction must be the action for damages and nobody will quarrel with the statement of law that if the "fixed sum" is in fact *in terrorem* and not a genuine pre-estimate of the damage suffered then the court will regard such fixed sum as a penalty and will not permit enforcement.

The vital questions therefore are—

(*a*) Does the dealer suffer any damage by reason of the re-sale of the car by the owner in breach of the covenant?

(*b*) If so, is the fixed sum a genuine attempt to pre-estimate such damage or is it imposed as security for the due performance of the contract?

It is unfortunate that no real attempt is made in the article to answer the first question beyond a bald statement of "how does he (the dealer) suffer any actual damage by the re-sale at an enhanced price, or at all, or a car which he has sold? He has no longer any interest in such a car."

I venture to suggest with all respect that a little deeper consideration will reveal definite and considerable damage. The whole scheme is clearly intended to operate against the speculative purchaser who buys a car with no intention other than to re-sell it as soon as possible at a profit. *His* purchaser will be the genuine car owner who will use and continue to use the car and in due course, perhaps, purchase further cars. Now, but for the intervention of the speculator the genuine purchaser would have been able to purchase his car at, of course, the proper list price, and would have become the *dealer's* customer with the reasonable expectation on the part of the dealer of (*a*) after-sales service and supplies custom, and (*b*) the probability of the owner resorting to the dealer for further purchases—in other words he would enhance the value of the dealer's goodwill.

With regard to (*a*) it is common knowledge that most dealers sink large capital sums in setting up after-sales service and supplies organisations, in the installation of petrol pumps, stocks of spare parts and accessories, workshops and plant, skilled mechanics, etc., all directed to obtaining a profit from after-sale service. In fact the actual sale of a new car might well be said to represent the initial introduction of the customer. If as a result of the action of the speculative intervener this business is lost or diminished to the dealer, he has clearly suffered damage.

Further, in the normal way, car owners will, after say a year or two, "trade in" their cars in part exchange for new ones. I believe that the trading-in value of used cars is fixed by the trade. As a result of the breach of covenant by the speculator the purchaser pays an inflated price for his car. If in due course he desires to trade in his car in part exchange for a new one the price allowed for his car will be wretchedly out of proportion to the price originally paid by him and I think it a reasonable assumption that this factor will deter him from proceeding with the transaction as early or as frequently as he might otherwise have done. The damage suffered by the dealer is apparent.

With regard to (*b*) the goodwill of a dealer's business depends entirely upon the number of genuine satisfied car customers he has and here again the intervention of the speculator directly damages this goodwill.

In all the above cases the damage cannot possible be evaluated with any precision but this, of course, does not relieve a person in breach from the necessity of paying damages and is not ground at all for the award of purely nominal damages. I do not think it can be said that the covenant against re-sale is of trivial importance but rather that the court would hold that the stipulation was of the highest importance and appreciated as such by both the covenantor and covenantee.

London, W.C.1. S. BARD.

The Conveyancer writes—

I am afraid that I cannot agree with the writer of this letter. It is a matter of opinion, of course, but I do not believe that the damage to the dealer described above is sufficiently close and direct to be within the rule in *Hadley* v. *Baxendale*, which governs the measure of damages in cases of breach of contract. I think that it would be held to be much too remote, much too speculative. Surely, if I were temporarily deprived of £100 because A had been late in carrying out a contract to pay it to me, I could not plead that I had envisaged putting it on a particular horse and that that horse had won. The coming and going of customers is too unaccountable to be treated as a natural consequence of a breach of contract, which is what *Hadley* v. *Baxendale* requires. Even if the damage is not too remote, I am quite unable to see how so heavy a payment as 45 per cent. of the purchase price can be a genuine pre-estimate of the loss of profits on after-care, unless the car is going to give a lot of trouble. Further, I should have thought that the inclusion of the purchase tax (which has nothing to do with after-care, and does not find its way to the trader at all) as a factor in the calculation betrays it as being no pre-estimate, but a means of fixing a figure *in terrorem*. I still maintain the views which I expressed, and am interested to see that most of the Diary on this subject was quoted verbatim by the *Motor Trader*.

REVIEWS

Students' Income Tax. By STANLEY W. ROWLAND, LL.B. (Lond.), F.C.A. Second Edition. 1946. London: Butterworth & Co. (Publishers), Ltd. 25s. net.

All lawyers like to think that they are students long after their call or admission. In the case of income tax this is bound to be true, and solicitors and even counsel who have to advise will want to look at a work such as this, where the principles are stated as clearly and simply as possible. Test the book by trying to understand the actual ss. 30 to 37 of the Finance Act, 1938, which made the income of residuary estate the income of the legatee for sur-tax purposes during the administration period and then, having failed to understand it, turn to the admirable short précis of the law at pp. 197 and 198 of this work. And yet it is not too short to be useful as a work of reference. Nearly three hundred cases are cited, not as footnotes, but in the body of the text, and not as mere names, but with the principle clearly and succinctly stated. In addition, the concrete cases freely introduced considerably ease the task of the reader of this difficult subject. The author is lecturer in accounts and bookkeeping at The Law Society's School of Law, in addition to his other appointments, and this book confirms that a good lecturer can write a good text-book. It will be found valuable by student and practitioner alike.

BOOKS RECEIVED

Advice to a Young Solicitor. Worldly Wisdom for the Tyro. By H. O. LOCK, solicitor. 1946. pp. vi and 71. London: Stevens & Sons, Ltd. 4s. net.

Principles and Law of Accident Insurance. By G. E. BANFIELD, A.C.I.I., of the Middle Temple, barrister-at-law. Fourth Edition. 1946. pp. vi and (with Index) 170. London: Sir Isaac Pitman & Sons, Ltd. 8s. 6d. net.

LAW FIRE

INSURANCE SOCIETY LIMITED

No. 114, Chancery Lane, London, W.C.2.

FIRE ACCIDENT BONDS

Directors:

Chairman—

GEORGE EDWARD HUNTER FELL, Esq. (Carleton-Holmes & Co.)

Vice-Chairman—

EDMUND TREVOR LLOYD WILLIAMS, Esq., J.P.

LANCELOT CLAUDE BULLOCK, Esq. (Markby, Stewart & Wadesons)
ROLAND CLIVE WALLACE BURN, Esq., C.V.O.
PHILIP HUGH CHILDS, Esq., J.P. (Bramsdon & Childs)
GUY HARGREAVES CHOLMELEY, Esq. (formerly of Frere, Cholmeley & Co.)
GEOFFREY ABDY COLLINS, Esq. (Peake & Co.)
GEOFFERY COODE-ADAMS, Esq. (Williams & James)
CHARLES JOSEPH EASTWOOD, Esq., J.P. (W. Banks & Co.)
JOHN CHARLES BLAGDON GAMLEN, Esq. (Morrell, Peel & Gamlen)
JOHN BERESFORD HEATON, Esq. (Rider, Heaton, Meredith & Mills)
PHILIP GWYNNE JAMES, Esq. (Gwynne James & Sons)
CHARLES HENRY MAY, Esq. (May, May & Deacon)
CHARLES CECIL AMPHLETT MORTON, Esq. (Ivens, Morton & Greville Smith)
RAMSAY LLEWELYN IVES NARES, Esq. (Francis & Crookenden)
HENRY JOHN NIX, Esq. (formerly of Raymond-Barker, Nix & Co.)
EDWARD HUGH LEE ROWCLIFFE, Esq. (Gregory, Rowcliffe & Co.)
WILLIAM LEWIS SHEPHERD, Esq. (Nicholson, Freeland & Shepherd)
GEORGE ERNEST SHRIMPTON, Esq. (Radcliffes & Co.)
GEORGE LAWRENCE STEWART, Esq. (Lee & Pembertons)
RALPH PERCEVAL TATHAM, Esq. (Church, Adams, Tatham & Co.)
RT. HON. LORD TERRINGTON (Dawson & Co.)
CECIL DUNSTAN WEBB, Esq. (Farrer & Co.)
CHARLES SPOTTISWOODE WEIR, Esq. (A. F. & R. W. Tweedie)
HERBERT MEADOWS FRITH WHITE, Esq. (Foyer, White & Prescott)
SIDNEY ALFRED WILLIAMSON, Esq. (Peachey & Co.)

Solicitors—**MARKBY, STEWART & WADESONS**

The care of sick children is of vital concern

£1,000 names a Cot "In Memoriam". £2,500 needed weekly for maintenance of our many activities.

Please remember the Hospital when advising your Clients on the preparation of their Wills.

THE

HOSPITAL FOR SICK CHILDREN

GT. ORMOND ST., LONDON, W.C.1

22,108.

TO ALL LAW CLERKS

SAVE to supplement your Pension under the Insurance Act

JOIN the only Friendly Society in the Law operating throughout the country

★

UNITED LAW CLERKS' SOCIETY

Offices :

MAXWELL HOUSE, ARUNDEL STREET, LONDON, W.C.2

Telephone : TEMPLE BAR 8879

THE CANCER RELIEF FUND

assists Yearly over 1,000 poor Sufferers

There is no more satisfying cause to which to devote unneeded wealth.

Hon. President :
H.H. PRINCESS VICTORIA BATTENBERG
(The Dowager Marchioness of Milford Haven)

NATIONAL SOCIETY FOR CANCER RELIEF

CHEAM COURT, CHEAM, SURREY

Tel. : VIGILANT 3672

Gratitude and "C.R.P." Booklets free on request.

Wolsey Hall, Oxford

PROPRIETORS : DIPLOMA CORRESPONDENCE COLLEGE, LTD

Founded  *in 1894*

POSTAL TUITION FOR LAW EXAMINATIONS

To meet the growing demand for first-class, up-to-date postal tuition for Law Examinations, Wolsey Hall has considerably expanded its Department of Legal Studies. This Department has been brought into accord with present-day conceptions of technique and approach by the appointment to the Staff of further eminent practising lawyers. Some advise upon the correct method of approach in the preparation of the Courses ; others draw up the Courses or correct and annotate the the students' work. Again, others give the student general advice and guidance in regard to his study and his career.

The College provides, in addition to the usual Revision Lessons (so essential to the study of Law), periodical Bulletins wherein are noted, clearly and concisely, the terms and effect of the latest decisions.

Postal Tuition is provided for London University Intermediate Laws, LL.B.; and Bar, Parts I & II, Examinations.

Other Departments of Wolsey Hall prepare candidates for examinations leading to Degrees in Arts, Science, Economics, Commerce and Theology, Diplomas in Public Administration, and for a wide range of educational examinations generally. Courses are also provided in single subjects, without examination in view. During the war Wolsey Hall, under arrangements with the War Office, supplied postal Courses for over 22,000 officers and other ranks in the Navy, the Army, and the R.A.F.

PROSPECTUS

on request (mentioning examination) to C. D. PARKER, M.A., LL.D., Director of Studies, Dept. HL29,

WOLSEY HALL, OXFORD

Hayward & Wright's Office of Magistrate. By J. WHITESIDE, solicitor, Clerk to the Exeter Justices. Seventh Edition. 1946. pp. 249 and (Index) 34. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 15s. net.

The Principles of Pleading and Practice in Civil Actions in the High Court of Justice. By W. BLAKE ODGERS, K.C., M.A., of the Middle Temple, Metropolitan Magistrate, and LEWIS FREDERICK STURGE, of the Inner Temple, barrister-at-law. Thirteenth Edition. 1946. pp. lxii and (with Index) 446. London: Stevens & Sons, Ltd. 30s. net.

Motor Claims Cases. A Digest of Fully Annotated Cases Connected with Motor Claims together with the Relevant Statutory Matter and Tables. By LEONARD BINGHAM, solicitor. 1946. pp. xxiii, 311 and (Index) 31. London: Butterworth and Co. (Publishers), Ltd. 30s. net.

The Commercial Law of Scotland. By W. D. ESSLEMONT, M.A., B.L., Advocate in Aberdeen. Fourth Edition. 1946. pp. (with Index) 391. Glasgow: William Hodge & Co., Ltd. 15s. net.

London Building Law. By HORACE R. CHANTER, F.R.I.B.A., F.S.I., M.I.Struct.E. 1946. pp. ix and (with Index) 358. London: B. T. Batsford, Ltd. 21s. net.

Penal Reform in England. Introductory Essays on Some Aspects of English Criminal Policy. Edited by L. RADZINOWICZ, M.A. (Geneva), LL.D. (Cracow), LL.D. (Rome), and J. W. C. TURNER, M.C., M.A., LL.B. (Cantab.), with a Foreword by Lord CALDECOTE and a Preface by Professor P. H. WINFIELD. Second Edition. 1946. pp. x and (with Index) 192. London: Macmillan & Co., Ltd. 12s. 6d. net.

The Rent Acts. Part II—Statutes. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, barrister-at-law. Second Edition. 1946. pp. 81–210. London: Stevens & Sons, Ltd. 5s. net.

Burke's Loose-Leaf War Legislation. Edited by HAROLD PARRISH, barrister-at-law. 1945–46 volume. Part 11. London: Hamish Hamilton (Law Books), Ltd.

New York University Law Quarterly Review. Vol. XXI, No. 2, April, 1946.

Oke's Magisterial Formulist. Third (Cumulative) Supplement to the Twelfth Edition. By J. P. WILSON, solicitor, Clerk to the Sunderland Justices. 1946. pp. ix 117 and (Index) 12. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 10s. 6d. net.

The Law of Income Tax. Supplement to the Tenth Edition. By His Hon. E. M. KONSTAM, K.C. 1946. pp. 24. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd.

OBITUARY

MR. S. E. CROSSE

Mr. Sidney Ernest Crosse, solicitor, of Messrs. Crosse & Crosse, solicitors, of Exeter, died in Switzerland recently, aged sixty-nine. He was admitted in 1915.

SUPREME COURT OF EIRE: MICHAELMAS SITTINGS

Forty appeals have been listed for hearing by the Supreme Court of Eire in the Michaelmas term, which opened on Thursday, 10th October. This is fifteen more than the number last term, and eight more than the number for Michaelmas sittings of last year.

Among the issues to be tried is whether a contract by a tenant for life for the sale of growing timber uncut at the time of his death, is binding on his successor. This case is expected to become a precedent.

Another action challenges the validity of the Land Acts, as contrary to the Constitution, on the ground that they purport to confer judicial powers upon lay commissioners, being persons not holding the qualifications required for judicial appointments.

One case, stated for the opinion of the High Court, asks whether there is jurisdiction under the Licensing (Ireland) Act, 1902, to grant a licence for premises which include premises already licensed, without proof of a further increase of population in the parish wherein the premises are situated, after the grant of the licence for such portion of the premises; and whether the licence for such portion of the premises is "an existing licence held in respect of the premises situated within a city or town," the surrender of which would give jurisdiction to grant a new licence for the larger premises in substitution thereof.

In all the divisions of the High Court the lists show substantial volumes of work, but Chancery lists are normal. One trial expected to take a long time is a claim for £30,000 in court as the property of the Sinn Fein organisation.

NOTES OF CASES

COURT OF APPEAL

Upsons, Ltd. *v.* Herne

Morton, Somervell and Asquith, L.JJ. 16th July, 1946

Landlord and tenant—Rent restriction—Flat let to tenant at single rent with other premises in same building—Whether "let" to tenant—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 *Geo.* 5, *c.* 17), *s.* 12 (1), (3).

Appeal from a decision of His Honour Judge Done, sitting at Barnet County Court.

In April, 1938, the defendant became tenant of a flat to which the Rent Restriction Acts applied and forming part of a building, consisting of two flats and a shop, which had been let as a whole under a single lease and at one comprehensive rent in 1911. The plaintiffs, as landlords, having brought an action, the county court judge made an order for possession and £234 arrears of rent. The order for possession was to be suspended so long as the tenant paid the current rent of £6 10s. a month and 10s. a month in reduction of the arrears of rent and costs. Later he wrote a note stating that his judgment was based on a finding that the flat (No. 2A) was first let separately in 1925 at a rent of £100 per annum and that £100 was therefore the standard rent, but that it appeared in the evidence that the whole building comprising Flats 2A and 2B and the shop had been let for a term of twenty-one years from the 19th September, 1911, at £150 per annum. His attention, he stated, had not been called to *Sutton* v. *Begley* [1923] 2 K.B. 694; 68 SOL. J. 82, and he had overlooked the question of apportionment. The principal ground of the tenant's appeal was that, from 1911 until a date after 1914, his flat and another flat, with a shop, were included in one lease to one Klein at a single rent of £150, that accordingly his (the tenant's) flat was "let" to Klein on the 3rd August, 1914, and that, to ascertain the standard rent, it was necessary to apportion, under s. 12 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, the rent of £150 between the three premises comprised in the lease of 1911.

MORTON, L.J., said that the question of law arose whether Flat 2A was "let" within the meaning of s. 12 (1) of the Act of 1920 by reason of the fact that it was included in the lease to Klein. If so, a case for apportionment arose; if not, Flat 2A was "first let" when it was let separately to one Curry in 1925, and the standard rent was £100, so that the tenant still remained bound to pay his agreed rent of £78 a year. He (his lordship) thought that the question must be answered in the affirmative. It was contended for the landlords that there was no "letting" of Flat 2A until 1925, it being sought to distinguish *Sutton* v. *Begley*, *supra*, on the ground that the flat here had always been a separate dwelling. The present case did differ in that respect from *Sutton* v. *Begley*, *supra*, but the only result of that difference was that, whereas *Sutton* v. *Begley*, *supra*, was a difficult case, the present case came directly within the wording of s. 12 (1) of the Act of 1920. This separate dwelling, Flat 2A, was let to Klein in 1911, and it was still let to him on the 2nd August, 1914. True, two other premises were included in the letting, and the three were let in one lease at one rent instead of in three separate leases at three separate rents, but he (his lordship) could not see how that prevented Flat 2A from being "let" within the meaning of the Act of 1920. Therefore the present case came within s. 12 (3) of the Act of 1920. This appeal must be allowed. Unless the parties could agree on an order, the case must be remitted to the county court judge to make an apportionment.

SOMERVELL, L.J., said that, while he agreed with Morton, L.J.'s, reasoning, he wished to refer to s. 12 (3) of the Act of 1920. It was loosely worded, dealing with rent and rateable value. There were express words dealing with the date in relation to which the standard rent was to be fixed; but no such words occurred in relation to rateable value, though that might equally have to be determined as on a particular date. The corresponding provision in that case was left to be implied. The words "of the property in which that dwelling-house is comprised" followed "rateable value," and the comma, which was not technically part of the statute, might suggest that those words only applied to rateable value. On the other hand, if the subsection were so read, the words "the rent" seemed to be left in the air. He thought, therefore, that one must either read the words "of the property in which the dwelling-house is comprised" as applying to "the rent," thus disregarding the comma, or one must imply them.

ASQUITH, L.J., gave judgment agreeing.

MORTON, L.J., said that he agreed with the observations of his brethren on s. 12 (3).

COUNSEL: The appellant appeared in person; *Raymond Waters*.

SOLICITORS: *William Charles Crocker*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

Nugent-Head *v.* Jacob (Inspector of Taxes)

Scott, Bucknill and Somervell, L.JJ. 25th July, 1946

Revenue—Income tax—Assessment of wife's income on husband—"Separate" from her husband—Construction—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40)—*All Schedules Rules, r.* 16.

Appeal from a decision of Macnaghten, J. (89 SOL. J. 554; 62 T.L.R. 66).

A husband and wife were married in 1933. The wife had at all material times been ordinarily resident in the United Kingdom. The husband joined the Army in 1939 and, until November, 1941, was stationed at various places in this country. She continued to live in London, but frequently stayed near where her husband was stationed and they spent all his leaves together. In November, 1941, he went abroad on active service, she remaining in the marital home in London, which contained the husband's personal effects and was at all times available to him whenever he should be able to return to it. The marriage was and remained at all times a happy one. The Crown admitted that the wife was living with her husband within the meaning of proviso (1) to r. 16 of the General Rules applicable to All Schedules to the Income Tax Act, 1918. She was entitled in her own right to a life interest in certain income arising under dispositions governed by American law. By s. 19 of the Finance Act, 1940, that income was chargeable to income tax in the full amount thereof arising in the year preceding the year of assessment whether or not remitted to this country, and her husband admitted liability to be assessed himself in respect of the whole of the income thus arising to his wife in the year 1941–42, although only a part of it was, in fact, remitted to this country. The amount of income from those dispositions remitted to the wife in London was assessed on her. The balance retained in America was assessed on her husband. She appealed against the assessment made on her. It was contended for her that, on the facts proved, the income in question should be deemed to be her husband's under proviso (1) to r. 16 and assessed on him accordingly. It was contended for the Crown that that part of the income in question arising to the wife which was remitted to this country should be assessed on her and not on her husband. The Special Commissioners upheld the assessment. Macnaghten, J., allowed the wife's appeal, holding that the case came within proviso (1) and that proviso (2) concerned an entirely distinct situation. The Crown now appealed. By r. 16 of the General Rules applicable to all Schedules to the Income Tax Act, 1918: "A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried: Provided that (1) the profits of a married woman living with her husband shall be deemed the profits of the husband and shall be assessed and charged in his name, and not in her name or the name of her trustee; and (2) a married woman living in the United Kingdom separate from her husband, whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who receives any . . . remittance from property out of the United Kingdom shall be assessed . . . as a *feme sole* if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him, or from his property, or on his credit." (*Cur. adv. vult.*)

SCOTT, L.J., in a written judgment, said that the whole litigation was, in his opinion, attributable to the extraordinary ambiguity of the language used in proviso (2) of r. 16. The statutory history of that language showed how the reluctance of the Inland Revenue authorities to see any Parliamentary change made in ancient wording to which they had become accustomed, and of which they thought (often rightly) that they knew the meaning (though the taxpayer probably did not), might lead to unnecessary disputes and, therefore, much public inconvenience. By the old income-tax statutes, in the case of "a married woman living with her husband," the husband alone was chargeable because no other treatment of her would have been consistent with the ancient identification of the wife with the husband so far as rights of property were concerned. The statutory expression of the common-law view appeared, for example, in s. 91 of the Income Tax Act, 1803, in practically the same terms as proviso (1) to r. 16. Proviso (2) had first taken shape in s. 101 of the Income Tax Act, 1805. The main argument for the wife was that the word "separate" in proviso (2) meant "separated," either judicially or by deed, or at least to a degree which would show such a disruption of the matrimonial home as would be recognised for some purpose or other in courts having matrimonial jurisdiction. It was further urged, with undoubted force, that the words "whether the husband be temporarily absent from the United Kingdom or otherwise" were unintelligible and should, in a taxing Act, on that account be disregarded. That interpretation was, however, in his opinion, rendered impossible by the last two lines of proviso (2). *Ex hypothesi*, the wife was "separate" from the husband if she received his money as there stated; and the receipt of money which he voluntarily sent was inconsistent with the meaning of the word "separate" which was essential to the argument on her behalf. The construction which interpreted the word "separate" as a synonym for "not living with the husband" in a merely local and factual sense was the only one which was not inconsistent with the word "temporarily" in proviso (2). What the words "or otherwise" were intended to cover he (his lordship) could not guess, but the dominant idea was that the wife might be receiving money from her husband though "separate." He, therefore, construed that word as merely representing the antithesis to living at the time in question in the same place as the husband. The appeal should be allowed.

BUCKNILL and SOMERVELL, L.JJ., delivered written judgments agreeing that the appeal should be allowed.

COUNSEL: *The Solicitor General* (Sir Frank Soskice, K.C.), *Stamp* and *Hills*, for the Crown; *Grant*, K.C., and *Donovan*, K.C., for the wife.

SOLICITORS: *Solicitor of Inland Revenue; Gordon, Dadds & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Becker *v.* Lavender, Ltd., and Another

Oliver, J. 27th May, 1946

Bailor and bailee—Valuable article returned by bailee—Delivery to porter unknown to bailor—Theft of article—Liability.

Action tried by Oliver, J.

The plaintiff, who lived at a flat in a large block of service flats, sent a valuable fur coat to the defendants, a company of costumiers and furriers, to be remodelled. As the defendants' premises were about to be closed for an annual holiday, the second defendant, having advised the plaintiff to take the coat back for safe custody, to which she agreed, took the coat, packed in a box, to the block of flats and handed it to a man who was attired in the livery of a porter employed at the flats and appeared on her ringing a bell in the entrance hall marked "ring for porter." The coat, however, was never delivered to the plaintiff's flat. She therefore now sued the defendants for its value, claiming damages for breach of contract of bailment, conversion and negligence. A porter, employed by the owner of the block of flats, who was on duty at the time, denied having received the coat, and the second defendant was unable to identify him. No suggestion of dishonesty was made against him.

OLIVER, J., said that it was the duty of a bailee in circumstances like those in question to take as much care of the property handed to him as a reasonable person would take of his own property. The value of the thing bailed must be at least one element in deciding how much care must be taken of it. For a parcel of washing a quite different measure of care would be required from that applicable to a valuable article such as a pearl necklace. He did not believe that a woman owning a fur coat worth over £600 would herself leave it with a porter strange to her at a block of flats where she had never been before, without even attempting to obtain a receipt for it, when, by looking at the board, she could have ascertained that the plaintiff's flat was on the first floor. The defendants had failed to exercise proper care, and there must be judgment against them for the plaintiff for £600.

COUNSEL: *Berryman*, K.C., and *Percy Lamb*; *Scott Henderson*, K.C., and *Garland*.

SOLICITORS: *Chamberlain & Co.*; *Lindus & Hortin.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Preston and Another *v.* Norfolk County Council

Lord Goddard, C.J. 12th July, 1946.

Agriculture—Notice to quit to tenant of holding—Ejection under judgment—Claim to compensation for disturbance—Arbitration—Case stated for High Court not County Court—Jurisdiction—Agricultural Holdings Act, 1923 (13 & 14 *Geo.* 5, *c.* 9), *ss.* 12, 16, *Sched. II.*

Special case stated by an arbitrator.

Norfolk County Council let a farm to the claimants under the Small Holdings and Allotments Acts, 1908 to 1926. By notice to quit dated 9th October, 1941, the council required them to give up possession of the farm on 11th October, 1942. They having failed to do so, the county council brought an action for possession. The claimants contended, among other defences, that the notice to quit was invalid. On 7th June, 1943, the county council obtained judgment for possession, with mesne

profits from the date of the writ at £212 10s. a year, the judgment directing that the claimants should give up possession of the holding on 11th October, 1943. Certain matters were left by the judgment to be dealt with by valuers to be appointed by the parties, and, if necessary, by arbitration, the arbitrator to state a case on any point of law arising at the request of either party. The valuers representing the parties in fact failed to reach agreement on the matters left for them by the judgment, and accordingly appointed an arbitrator under the Arbitration Acts. The only matter calling for a report was the claimants' claim for compensation for disturbance under s. 12 of the Act of 1923. The county council contended that the claimants were not entitled to compensation for disturbance because they had quitted the holding in consequence, not of the notice to quit, which they had claimed to be invalid, but of the judgment of the High Court. By s. 16 of the Agricultural Holdings Act, 1923, " (1) Any question . . . arising out of any claim by the tenant of a holding against the landlord for compensation payable under this Act . . . shall be determined, notwithstanding any agreement . . . for a different method of arbitration, by a single arbitrator in accordance with the . . . Second Schedule to this Act." The second Schedule provides that the arbitrator, if required to state a case, shall do so for the opinion of the county court judge, from whom an appeal lies to the Court of Appeal.

LORD GODDARD, C.J., said that he had at first doubted whether he had jurisdiction to entertain the matter in view of s. 16 (1) of the Second Schedule to the Act of 1923. He had first to be satisfied that the parties had had the right to refer the matter to the arbitrator in the ordinary way under the Arbitration Acts. The question had never been decided in England, but the very point had arisen in Scotland. In *Hendry* v. *Walker* [1927] S.L.T. 333, Lord Constable held that he had jurisdiction to hear an action which involved trying a question which was precedent to the existence of any claim to compensation under the Act. He founded himself on *Donaldson's Hospital* v. *Esslemont* [1925] S.C. 199. Those were clear decisions that the question whether the claimants were persons who could claim compensation at all could be tried by the court apart from arbitration as prescribed by the Act. He (Lord Goddard, C.J.) would therefore hold that he had jurisdiction here. The council then argued that the claimants, having held over on expiry of the notice to quit, became trespassers and left the holding because of the judgment and not because of the notice, and so could not claim compensation for disturbance, and relied strongly on the definitions in s. 57 of the Act of " tenant " as " the holder of land under a contract of tenancy " and of " holding " as " any parcel of land held by a tenant." In his (his lordship's) opinion, " held " in the definition of " holding " meant " held or which has been held by a tenant." The point had been the subject of two decisions of the Court of Appeal which were difficult to reconcile, *Cave* v. *Page* [1923] W.N. 178, and *Mills* v. *Rose* [1923] W.N. 330. In *Mills* v. *Rose, supra*, Atkin, L.J.'s reasoning, which commended itself to him (Lord Goddard, C.J.), was that " although the tenant was put out by a writ of execution, he none the less quitted the holding in consequence of a notice to quit, inasmuch as the landlord's right to a judgment in ejectment depended upon the notice to quit." The judgment which forced the tenant to leave was founded on the fact that notice to quit had been given. That seemed not only good law but also good sense. He preferred to follow *Mills* v. *Rose, supra*, rather than *Cave* v. *Page, supra*. The claimants were accordingly entitled to compensation.

COUNSEL: *Percy Lamb ; Diplock.*

SOLICITORS: *Tarry, Sherlock & King*, for *Blyth & Hornor*, Norwich ; *Sharpe, Pritchard & Co.*, for *The Clerk to Norfolk County Council.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Miller *v.* Minister of Health

Henn Collins, J. 25th July, 1946

Housing—Compulsory purchase of land—Housing scheme—Letter from other departments to Minister approving scheme—No need for disclosure to landowner—Landowner's notice of objection—No opportunity of elaborating objections—Order confirming compulsory purchase order—Validity—Housing Act, 1936 (26 *Geo.* 5, & 1 *Edw.* 8, *c.* 51).

Appeal under the Housing Acts.

The owner of land in the area of a rural district council was informed that the council proposed to purchase compulsorily 0·6 of an acre of that land for the purposes of Pt. V of the Housing Act, 1936. He thereupon submitted to the Minister of Health a notice of objection setting out his grounds of objection to the proposed order. The Minister having confirmed the compulsory order, the present appeal was brought against that confirmation order on two grounds : (1) that the Minister improperly took into consideration a letter dated the 13th September, 1945, of which the appellant had no knowledge, from the regional planning officer to the rural district council stating that there would be no objection by the Government departments concerned to the proposed acquisition of the appellant's land for the purposes of the council's housing scheme ; and (2) that the appellant was given no opportunity of elaborating, by evidence or otherwise, his grounds of objection submitted to the Minister.

HENN COLLINS, J., said that the question whether in any matter the Minister should or should not act administratively could not be determined according to any principle of law or of natural justice, but was governed only by considerations of expediency. In certain circumstances, however, the Housing Acts left it to the Minister to decide whether his administrative powers should be exercised, and he must decide such matters judicially. He might use knowledge which came to him, so to speak, extra-judicially, but all the material collected for his judicial consideration must be made available to both sides concerned in the matter. It was argued that the letter of the 13th September, 1945, constituted such material, and should have been brought to the appellant's notice. It was, however, necessary for the Minister, from the administrative point of view, to know that there would be no objection to the proposed scheme by the other Government departments interested. The Government was one, though divided into many departments for convenience. It gave the appellant no cause for complaint that the Minister had considered that letter before he began to act judicially in the matter. The appellant's second objection gained some force from *Stafford* v. *Minister of Health* (1946), 62 T.L.R. 454 ; *ante*, p. 260. There the Minister had forwarded the appellant landowner's grounds of objection to the other party, as it were, to the dispute, the local authority, for their views, without telling the appellant, and then proceeded to confirm the compulsory purchase order. In that case the Minister clearly did not accept the appellant's objections as submitted. Here the Minister had given no such indication. There was no indication that he was not accepting all that the appellant had said, and yet was acting administratively. Charles, J., did not there say that, whenever an appellant had given notice of objection, he must be given an opportunity of elaborating his objections, by evidence or otherwise ; but only that, having given the local authority the opportunity to make a detailed reply to the objections, the Minister should submit that reply to the appellant and give him an opportunity of setting out his own case *in extenso*. That case was accordingly distinguishable from the present one, and this appeal must be dismissed.

COUNSEL : *Squibb ; H. L. Parker.*

SOLICITORS : *Culross & Co.*, for *Ollard & Bentley*, March ; *The Solicitor, Ministry of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

The Atlantic and The Baltyk

Bucknill, L.J. (sitting as an additional judge), assisted by Elder Brethren of Trinity House. 3rd June, 1946

Shipping—Collision—Evidence—Admissibility—Sworn statements by crew—Evidence Act, 1938 (1 & 2 *Geo.* 6, c. 28), *s.* 1—*R.S.C., Ord. XXX, r.* 2.

Action tried by Bucknill, L.J.

A collision occurred in the North Atlantic between the plaintiffs' ship and that of the first defendants, in February, 1943, a few minutes after a collision between the latter vessel and that of the second defendants, in respect of which another action was pending. Counsel for the two defendants having requested the judge to decide also the liability for the collision between the defendants' vessels, he heard evidence, and held the two vessels equally to blame for both collisions. In the course of the hearing counsel for the first defendants sought to have admitted in evidence sworn statements which had been taken from the master and other members of the crew of their ship in America about one month after the collisions.

BUCKNILL, L.J., ruled that the statements of members of the crew other than the master were admissible under s. 1 of the Evidence Act, 1938, as having been made by persons who were not " interested " within the meaning of s. 1 (3) of that Act. Moreover, undue expense and delay would otherwise be caused. The master's statement must, however, be rejected. His evidence ought not to be admitted in that form since counsel for the plaintiffs and for the second defendants wished to cross-examine on it, and their request was reasonable (see R.S.C., Ord. XXX, r. 2 (3) (b)). There was the further objection under

s. 1 of the Act of 1938 that the master was a " person interested at a time when proceedings were pending or anticipated " ; for, as master of the ship in charge of her navigation before the collision with the plaintiffs' ship, he might be held personally liable for damage to that ship. He (his lordship) was not satisfied that it had not been " reasonably practicable " to secure the master's attendance before either the court or an examiner during the three years which had elapsed since the collisions, and no evidence had been adduced of any attempt to secure the master's attendance or to show that proper attempts would have been unsuccessful. He (his lordship) accordingly felt bound, in any event, in the exercise of his discretion, not to admit the master's evidence.

COUNSEL : *Bateson*, K.C., and *Naisby ; Carpmael*, K.C., and *Waldo Porges ; Hayward*, K.C., and *Boyes*.

SOLICITORS : *Holman, Fenwick & Willan ; Ince, Roscoe, Wilson & Glover ; Constant & Constant.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

ARDROSSAN GAS PROVISIONAL ORDER BILL [H.C.]. [10th October.

HILL FARMING BILL [H.C.]. [10th October.

Read Second Time :—

NATIONAL HEALTH SERVICE BILL [H.C.]. [9th October.

PUBLIC NOTARIES (WAR SERVICE OF ARTICLED CLERKS) BILL [H.C.]. [10th October.

In Committee :—

CABLE AND WIRELESS BILL [H.C.]. [10th October.

SUPREME COURT OF JUDICATURE (CIRCUIT OFFICERS) BILL [H.C.]. [10th October.

HOUSE OF COMMONS

Read First Time :—

COINAGE BILL [H.C.]. [9th October.

To provide for a coinage other than silver to be legal tender for payments up to forty shillings, and for consequential amendments of enactments relating to silver coin ; to amend the law as to the fineness of silver coins of the King's Maundy moneys ; and to confer further powers as to the purchase of metal for coinage.

PUBLIC WORKS LOANS (No. 2) BILL [H.C.]. [9th October.

To grant money for the purpose of certain local loans out of the Local Loans Fund ; to make provision as to the Public Works Loan Commissioners entering into undertakings to grant loans ; and to repeal the provisions of section ninety-two of the Housing Act, 1936, and of section seventy-three of the Housing (Scotland) Act, 1925, as to the minimum rate of interest therein mentioned.

UNEMPLOYMENT INSURANCE (EIRE VOLUNTEERS) BILL [H.C.]. [9th October.

To empower the Minister of National Insurance to give effect to arrangements for paying unemployment benefit to persons ordinarily resident in Eire who have served in His Majesty's forces ; and for purposes connected with the matters aforesaid.

Read Second Time :—

COUNTY COUNCILS ASSOCIATION (SCOTLAND) BILL [H.C.]. [9th October.

EDUCATION (SCOTLAND) BILL [H.L.]. [9th October.

POLICE (SCOTLAND) BILL [H.L.]. [9th October.

ROOSEVELT MEMORIAL BILL [H.C.]. [11th October.

Read Third Time :—

ATOMIC ENERGY BILL [H.C.]. [11th October.

QUESTIONS TO MINISTERS

SOLICITORS' ARTICLED CLERKS AND NATIONAL SERVICE

Lieut.-Colonel SHARP asked the Attorney-General what arrangements have been made to enable service men whose articles to a solicitor for a fixed period of years have been interrupted by national service, to continue that training beyond the end of the period originally fixed for its termination.

THE ATTORNEY-GENERAL : Provisions for the computation of national service in a clerk's period of articles to a solicitor are contained in the Solicitors (Emergency Provisions) Act, 1940. If an articled clerk does not wish to take advantage of these provisions he may, by agreement with the solicitor to whom he is articled, continue serving his articles for the full period of years required by the Solicitors Act, 1932, on payment of stamp duty of ten shillings on further articles for the remainder of the term. If the solicitor to whom the clerk is articled has died or retired from practice in the meantime, or for any other reason is unable to accept the clerk under articles for the remainder of the statutory period, The Law Society uses its best endeavour to secure another principal with whom the clerk may finish the period under new articles. I know of no case in which it has not been possible to make the necessary arrangements. [8th October.

" BLACK MARKET " OFFENCES

Mr. SHURMER asked the Minister of Food whether, in view of the widespread concern about black marketing in food and the fact that even after prosecution persons still have a chance to carry on this illegal practice, he will consider the confiscation of profits of offenders and expulsion from the trade.

Mr. STRACHEY : The Defence (General) Regulations provide that the minimum fine which shall be imposed upon conviction shall be such amount as will in the opinion of the court secure that the offender derives no benefit from the offence. In reply to the second part of the question, the conduct of every trader convicted of " black market " or other serious offence against the food regulations is most carefully considered in my department and in appropriate circumstances his licence to trade is revoked. [9th October.

INDEX TO STATUTORY RULES AND ORDERS

Sir JOHN MELLOR asked the Financial Secretary to the Treasury if he will arrange for a complete list of Statutory Rules and Orders in force, with explanatory memoranda, to be published quarterly.

Mr. GLENVIL HALL : No, sir. Compilation of a new edition of the index to the Statutory Rules and Orders in force is proceeding as rapidly as possible. This is a triennial publication and could not be produced quarterly as suggested. Changes in the law which are made in any particular year are shown in the tables and index which are attached to the annual volumes of Statutory Rules and Orders. [10th October.

PENSIONS APPEALS

Lieut.-Commander CLARK HUTCHISON asked the Minister of Pensions whether he will reconsider his decision in regard to the findings of the special Arbitration Tribunal and allow an appeal on a point of law to the High Court in England and Court of Session in Scotland.

THE MINISTER OF PENSIONS (Mr. WILFRED PALING) : The decision that references to the special Arbitration Tribunal should be on the basis that both the appellant and the Ministry will accept its finding as final and conclusive was reached after full consideration of all the circumstances, and I can find no grounds for departing from this decision.

Lieut.-Commander HUTCHISON : Does the right hon. gentleman not consider it highly undesirable that access to the High Courts should be denied to an individual ?

Mr. PALING : Access to the High Court was there on the first occasion. This was rather a particular occasion created to meet a special difficulty. [10th October.

SCOTLAND (JUSTICES OF THE PEACE)

Colonel GOMME-DUNCAN asked the Prime Minister why appointments of justices of the peace in Scotland are made by the Lord Chancellor and not by the Secretary of State for Scotland.

THE PRIME MINISTER (Mr. ATTLEE) : Since 1707 justices of the peace in Scotland have been appointed by the Crown by a special Commission under the Great Seal of Great Britain, and in their report of 1911 the Royal Commission on the Selection of Justices of the Peace recommended that, so long as these appointments are made by the Crown, the Lord Chancellor as Lord Keeper of the Great Seal is the most suitable Minister to be entrusted with the responsibility of advising on the appointments to be made. I understand that the new Royal Commission on Justices of the Peace which is just about to begin its labours may be expected *inter alia* to review this question. [10th October.

Lord Justice Morton (handicap 5) and Lord Justice Cohen (7) won both the morning and afternoon competitions at the Bar Golfing Society's meeting which was held on the course of the Woking Club on 8th October. In the morning, when bogey foursomes were played for the Captain's prize, they had a return of all square, the runners-up being Mr. C. D. Aarvold (6) and Mr. G. Russell Vick, K.C. (8), who were 1 down. In the afternoon there was a Stableford foursome competition for the Barristers' Benevolent Association Cup, Lord Justice Morton and Lord Justice Cohen being successful with 34 points. Second were Mr. G. D. Roberts, K.C. (3) and Mr. C. R. Havers, K.C. (14), with 32½ points.

RULES AND ORDERS

S.R. & O., 1946, No. 1585

TOWN AND COUNTRY PLANNING, ENGLAND AND WALES

THE TOWN AND COUNTRY PLANNING GENERAL (INTERIM DEVELOPMENT) DIRECTION, 1946, DATED SEPTEMBER 30, 1946, MADE BY THE MINISTER OF TOWN AND COUNTRY PLANNING UNDER SECTION 6 (2) OF THE TOWN AND COUNTRY PLANNING (INTERIM DEVELOPMENT) ACT, 1943 (6 & 7 GEO. 6, c. 29).

B989.

The Minister of Town and Country Planning (hereinafter called "the Minister") in pursuance of the powers conferred upon him by sub-section (2) of Section 6 of the Town and Country Planning (Interim Development) Act, 1943, as amended by sub-section (2) of Section 31 of the Town and Country Planning Act, 1944,* and of all other powers enabling him in that behalf hereby directs that an Interim Development authority to whom any application has been made for permission under Section 10 of the Town and Country Planning Act, 1932,† to develop land by the winning and working of any of the minerals specified in the Schedule hereto shall furnish the Minister with a copy of such application together with copies of any plans and maps submitted with such application.

SCHEDULE

Fullers Earth.	Bauxite.	Graphite.
Diatomite.	Tungsten Ore.	Lignite.
China Clay.	Lead Ore.	Oil Shale.
China Stone.	Zinc Ore.	
Felspar.	Tin Ore.	Anhydrite.
Ball Clay.	Manganese Ore.	Gypsum.
Talc.	Fluorspar.	Phosphate Rock.
Pyrophyllite.		Mica.
		Celestine.

Moulding Sands.
Silica Sands.
Rock Quartzite.

Given under the Official Seal of the Minister of Town and Country Planning this thirtieth day of September One thousand nine hundred and forty-six.

(L.S.) *E. S. Hill,*
Authorised by the Minister to sign in that behalf.

* 7 & 8 Geo. 6, c. 47. † 22 & 23 Geo. 5, c. 48.

S.R. & O., 1946, No. 1636/L.19

SUPREME COURT, ENGLAND—ASSIZES (MATRIMONIAL CAUSES) THE MATRIMONIAL CAUSES (SPECIAL COMMISSION) ORDER, 1946. DATED OCTOBER 9, 1946.

I, William Allen Lord Jowitt, Lord High Chancellor of Great Britain, by virtue of section 70 of the Supreme Court of Judicature (Consolidation) Act, 1925,* and all other powers enabling me in this behalf, do with the concurrence of Rayner Lord Goddard, Lord Chief Justice of England, and of Frank Boyd Lord Merriman, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, hereby order as follows:—

1. A Special Commissioner acting under a Special Commission for the trial of matrimonial causes may, subject to Rules of Court, try and determine undefended petitions for divorce in which no grounds other than adultery, cruelty or desertion are alleged, except petitions in which the petitioner claims damages against a co-respondent.

2. This Order may be cited as the Matrimonial Causes (Special Commission) Order, 1946.

Dated the 9th day of October, 1946.

Jowitt, C.
We concur *Goddard,* C.J.
Merriman, P.

* 15 & 16 Geo. 5, c. 49.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 1598. **Blocked Accounts** (Authorised Investments) Order. September 26.

No. 1575. **Coal Industry Nationalisation** (Central Selling Schemes) Regulations. September 27.

No. 1573. Coal Industry Nationalisation (Central Valuation Board) Regulations. September 27.

No. 1574. Coal Industry Nationalisation (Options and Constitution of Compensation Units) Regulations. September 27.

No. 1612. **Gas.** Dudley Brierley Hill and District Gas (Capital Powers) Order. September 30.

No. 1581. **Lee Conservancy Catchment Board Act,** 1938 (Extension of Time) (No. 3) Order. September 23.

No. 1617. **Liverpool Water** Order. October 1.

No. 1604. **National Insurance** (Increase of Old Age Pensions) Regulations. September 28.

No. 1580. **Open General Export** Licence in respect of Goods sent by Parcel Post. September 27.

No. 1627. **Poor Law.** Relief Regulation (Amendment) Order. October 4.

No. 1624. **Public Assistance** (Amendment) Order. October 4.

No. 1582. **Rugs** (Manufacture and Supply) Directions. September 28.

No. 1586. **Stamp Duties.** Unit Trust Records Regulations. September 27.

No. 1585. **Town and Country Planning** General (Interim Development) Direction. September 30.

No. 1614. **Trading with the Enemy.** Germany. Licence. October 3.

No. 1609. **U.S.A. Securities** (Placing at Treasury Disposal) (Exemption) Order. October 1.

No. 1596. **Unemployment Insurance** (Anomalies) (Amendment) (Extension) Order. October 1.

No. 1590. Unemployment Insurance (Banking Industry Special Scheme) (Amendment) (No. 2) Order. September 30.

No. 1591. Unemployment Insurance (Insurance Industry Special Scheme) (Amendment) (No. 3) Order. September 30.

No. 1615. **Unlicensed Residential Establishment Wages Board** (Registration) Regulations. October 3.

No. 1593. **Whitby Gas** (Capital Powers) Order. September 20.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

Mr. HARRY HAROLD HADDEN has been appointed an official arbitrator under the Acquisition of Land Act. He was chief property adviser to the Public Trustee until 1944, when he retired after thirty-six years' service. His offices will be at Cheltenham. The official arbitrators are appointed by the reference committee, consisting of the Lord Chief Justice, the Master of the Rolls, and the President of the Royal Institution of Chartered Surveyors.

Mr. Alfred Tylor, K.C., has retired from his appointment on the Treasury Solicitor's staff as Legal Adviser to the Ministry of Food, in order to resume his private practice at the Bar. Mr. Tylor has been succeeded in the Treasury Solicitor's Department by Mr. J. R. HOOD. Mr. Hood was called by the Middle Temple in 1927.

Notes

Mr. Harold McKenna, the Bow Street magistrate, has resigned from the chairmanship of Berkshire Quarter Sessions and is succeeded by Mr. Justice Hilbery.

At a meeting of the General Council of the Bar held on 14th October the following officers were duly elected: Mr. G. O. Slade, K.C., Chairman, and Mr. Gerald Upjohn, C.B.E., K.C., Honorary Treasurer. The Vice-Chairman will be appointed later.

Mr. G. R. Strauss, Parliamentary Secretary to the Ministry of Transport, opening a road safety exhibition at Sheffield recently, announced that driving tests for motorists will be resumed on 1st November.

A rent tribunal has been set up covering Chard, Glastonbury, Taunton, Wells, Weston-super-Mare, Crewkern, Ilminster, Street, Wellington, Minehead and the rural districts of Axbridge, Bridgwater, Chard, Wellington and Wells. Its offices will be at 70 The Boulevard, Weston-super-Mare. Members are: Mr. G. Knowles (Chairman); Mr. A. E. Weatherhead (Reserve Chairman); Mr. B. Lloyd-Davies. Reserve members are Mr. A. F. Cater, Mr. R. D. Harvey and Mrs. F. I. McGill.

LIVERPOOL LAW CLERKS' SOCIETY

The Society is resuming its activities, suspended during the war, and the following lectures will be delivered during the session 1946–7.

1946—17th, 24th and 31st October, "Practical Conveyancing—Contract to Completion" by Mr. B. B. Benas, B.A., LL.B. 7th, 14th and 21st November, "Executors and Administrators, including Probate and Death Duties," by Mr. J. J. Somerville, B.A., B.L. 28th November and 5th December, "Practice of the Superior Courts and County Courts," by Mr. H. A. Munro. 12th and 19th December, "Divorce and Matrimonial Causes," by Mr. J. Crossley Vaines, LL.M.

1947—2nd and 9th January, "Commercial Contracts," by Mr. J. Turner, LL.M. 16th and 23rd January, "Criminal Law (including Justices' and Coroners' Courts)," by Professor D. Seaborne Davies, M.A., LL.B. 30th January, "Torts," by Professor D. Seaborne Davies, M.A., LL.B. 6th February, "Company Law," by Mr. J. Turner. 13th, 20th and 27th February, "Landlord and Tenant (including Rent Restrictions Acts)" by Mr. A. Owen Hughes, LL.M. 3rd March, "Inheritance (Family Provision) Act," by Mr. A. Owen Hughes, LL.M.

The Lectures will be delivered in the Common Hall, Hackins Hey, Dale Street, Liverpool, commencing at 5.45 p.m. For further particulars apply to Mr. D. R. Middleton, Hon. Secretary, c/o Law Library, 81, Dale Street, Liverpool.

LAW ASSOCIATION

The monthly meeting of the Directors was held at The Law Society's Hall on Monday, 7th October, 1946. Present were Mr. S. Hewitt Pitt (Chairman) and the following Directors: Messrs. T. L. Dinwiddy, G. D. Hugh Jones, Frank S. Pritchard, H. T. Traer-Harris, John Venning, and Wm. Winterbotham.

The death of the President of the Association, The Right Honourable Lord Blanesburgh, G.B.E., on the 17th August last, was reported, and the following resolution, proposed by the Chairman, was passed:—

"The Directors desire to place on record their profound regret at the death, on the 17th August, 1946, of The Right Honourable Lord Blanesburgh, G.B.E., who, as The Right Honourable Sir Robert Younger, Lord Justice of Appeal, was at the Annual General Court in May, 1920, elected President of the Association, an office which he filled till the date of his death, and also their deep sense of gratitude for the unfailing interest which he took in the work and welfare of the Association, over the twenty-six years of his Presidency."

The receipt of legacies and donations was reported, fourteen applications for assistance were considered by the Board, grants totalling £435 5s. were made, and other general business was transacted.

SOLICITORS' BENEVOLENT ASSOCIATION

The annual general meeting of members was held on the 2nd October, 1946. Mr. T. A. B. Forster, of Newcastle-upon-Tyne, the Chairman, said that a pleasing feature of the work had been the increase in the grants made to the beneficiaries. There was hardly a case that had not received some little extra consideration, either by way of a special grant or an increased weekly allowance. The total amount distributed during the year was £25,573 5s. 2d., which included grants for education and training.

Many members whose subscriptions had been suspended while they were on active service had resumed their annual payments, and appeals for new members had met with a good response. The Law Society and a large number of the Provincial Law Societies give generous support each year.

Mr. T. C. Curtis and Mr. G. L. Addison (Hon. Treasurer) moved a hearty vote of thanks to the Chairman for his overwhelming success in increasing the membership, and this was carried with acclamation. Over 400 new members were admitted during Mr. Forster's term of office.

The Association's offices are at 12, Clifford's Inn, Fleet Street, E.C.4.

Wills and Bequests

Sir Rollo Frederick Graham-Campbell, late Chief Metropolitan Magistrate, of Oxshott, Surrey, left £3,551.

Mr. J. P. Medley, solicitor, of Scarborough, left £62,762, with net personalty £47,095.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1946

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., Oct. 21	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., ,, 22	Hay	Jones	Reader
Wed., ,, 23	Farr	Reader	Hay
Thurs., ,, 24	Blaker	Hay	Farr
Fri., ,, 25	Andrews	Farr	Blaker
Sat., ,, 26	Jones	Blaker	Andrews

	Group A.		Group B.	
Date.	Mr. Justice Roxburgh *Witness.*	Mr. Justice Wynn-Parry *Non-Witness.*	Mr. Justice Evershed *Non-Witness.*	Mr. Justice Romer *Witness.*
Mon., Oct. 21	Mr. Farr	Mr. Blaker	Mr. Hay	Mr. Reader
Tues., ,, 22	Blaker	Andrews	Farr	Hay
Wed., ,, 23	Andrews	Jones	Blaker	Farr
Thurs., ,, 24	Jones	Reader	Andrews	Blaker
Fri., ,, 25	Reader	Hay	Jones	Andrews
Sat., ,, 26	Hay	Farr	Reader	Jones

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Oct. 14 1946	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	114	3 10 2	2 8 2
Consols 2½%	JAJO	97¼	2 11 5	—
War Loan 3% 1955–59	AO	106	2 16 7	2 4 2
War Loan 3½% 1952 or after	JD	107⅛	3 5 0	2 2 6
Funding 4% Loan 1960–90	MN	117	3 8 5	2 10 9
Funding 3% Loan 1959–69	AO	105⅜	2 16 8	2 8 10
Funding 2½% Loan 1952–57	JD	104	2 12 11	1 19 3
Funding 2½% Loan 1956–61	AO	102	2 9 0	2 5 2
Victory 4% Loan Av. life 18 years	MS	119	3 7 3	2 13 1
Conversion 3½% Loan 1961 or after	AO	111¾	3 2 7	2 9 11
National Defence Loan 3% 1954–58	JJ	106½	2 16 5	1 18 11
National War Bonds 2½% 1952–54	MS	102⅜	2 8 8	2 1 9
Savings Bonds 3% 1955–65	FA	106	2 16 7	2 4 2
Savings Bonds 3% 1960–70	MS	106	2 16 7	2 9 9
Local Loans 3% Stock	JAJO	100¾	2 19 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101½	2 19 1	—
Guaranteed 2½% Stock (Irish Land Act 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	111½	2 13 10	2 10 9
Sudan 4½% 1939–73 Av. life 16 years	FA	120	3 15 0	2 18 4
Sudan 4% 1974 Red. in part after 1950	MN	114xd	3 10 2	—
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	2 6 2
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	100	2 10 0	2 10 0
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	110	3 12 9	2 13 4
Australia (Commonw'h) 3½% 1964–74	JJ	108	3 0 2	2 13 7
*Australia (Commonw'h) 3% 1955–58	AO	103	2 18 3	2 12 6
†Nigeria 4% 1963	AO	118	3 7 10	2 13 4
*Queensland 3½% 1950–70	JJ	104	3 7 4	2 2 6
Southern Rhodesia 3½% 1961–66	JJ	113	3 1 11	2 9 1
Trinidad 3% 1965–70	AO	105	2 17 2	2 13 2
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	101	2 19 5	—
*Croydon 3% 1940–60	AO	101	2 19 5	—
*Leeds 3½% 1958–62	JJ	108	3 0 2	2 8 1
*Liverpool 3% 1954–64	MN	104	2 17 8	2 8 1
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	120	2 18 4	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	101⅛	2 19 1	—
*London County 3½% 1954–59	FA	108	3 4 10	2 7 10
*Manchester 3% 1941 or after	FA	101	2 19 5	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 10 3
Met. Water Board 3% "A" 1963–2003	AO	105	2 17 2	2 12 4
*Do. do. 3% "B" 1934–2003	MS	102	2 18 10	—
*Do. do. 3% "E" 1953–73	JJ	103½	2 18 0	2 7 4
Middlesex C.C. 3% 1961–66	MS	105	2 17 2	2 11 5
*Newcastle 3% Consolidated 1957	MS	104½	2 17 5	2 10 6
Nottingham 3% Irredeemable	MN	107⅛	3 15 10	—
Sheffield Corporation 3½% 1968	JJ	114	3 1 5	2 13 1
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	114	3 10 2	—
Gt. Western Rly. 4½% Debenture	JJ	123	3 13 2	—
Gt. Western Rly. 5% Debenture	JJ	133½	3 14 11	—
Gt. Western Rly. 5% Rent Charge	FA	129½	3 17 3	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	125⅛	3 19 8	—
Gt. Western Rly. 5% Preference	MA	112½	4 8 11	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90 Chancery Lane, London, W.C.2. Holborn 1403.

Annual Subscription: Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).